



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 03027-99
17 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LTI [REDACTED], USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 5 May 99 w/attachments
(2) PERS-00J memo dtd 13 Oct 99
(3) PERS-311 memo dtd 21 Jan 00
(4) PERS-85 memo dtd 4 Feb 00
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports and all related correspondence for 1 March to 25 August 1997, 1 September 1997 (changed to 26 August 1997) to 28 February 1998 (changed to 27 March 1998) and 28 March to 21 July 1998, copies of which are at Tabs A, B and C, respectively. Petitioner further requested removal of her failures of selection before the Fiscal Year (FY) 99 and 00 Line Lieutenant Selection Boards, so as to be considered by the selection board next convened to consider officers of her category for promotion to lieutenant as an officer who has not failed of selection for promotion to that grade. Because of the failures of selection for promotion, she is scheduled to be involuntarily discharged on 1 April 2000. Petitioner made no request for consideration by a special selection board. She may, if she wishes, make such a request by separate correspondence to the Secretary of the Navy via the Navy Personnel Command (NPC), Code PERS-85 on the basis of this Board's action in this case.

2. The Board, consisting of Messrs. Hogue and Molzahn and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 17 February 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner contends that on the basis of unsubstantiated and inaccurate information she was relieved of duty, given three detrimental fitness reports and issued a detachment for cause (DFC); that the DFC alleged unsatisfactory performance over the period of the three fitness reports; that the allegations were unsubstantiated and the DFC was disapproved by the Deputy Chief of Navy Personnel; and that the DFC and the three fitness reports resulted in her failures of selection to lieutenant.

c. In correspondence attached as enclosure (2), the NPC office having cognizance over minority affairs has recommended that the contested fitness reports be removed and that Petitioner be afforded consideration by a special selection board.

d. In correspondence attached as enclosure (3), the NPC office having cognizance over fitness report matters has concurred with the advisory opinion at enclosure (2).

e. In correspondence attached as enclosure (4), the NPC office having cognizance over active duty promotions has commented to the effect that removal of the failures of selection or special selection board consideration should be granted only upon action by this Board to effect removal of the fitness reports in question.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2), (3) and (4), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness reports and related material:

| Date of Report | Reporting Senior | Period of Report From To |
|----------------|-------------------|--|
| 97Aug29 | CAPT L [REDACTED] | 97Mar01 97Aug25 |
| 98Mar12 | CAPT L [REDACTED] | 97Sep01 98Feb28 (changed to 97Aug26) (changed to 98Mar27) |
| 98Jul20 | CAPT [REDACTED] | 98Mar28 98Jul21 |

b. That there be inserted in Petitioner's naval record ONE memorandum in place of the removed reports, containing appropriate identifying data; that the memorandum state that the portion of Petitioner's fitness report record for 1 March 1997 to 21 July 1998 has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the removed material.

c. That Petitioner's record be corrected so that she will be considered by the earliest possible selection board convened to consider officers of her category for promotion to lieutenant as an officer who has not failed of selection for promotion to that grade.


d. That any discharge or other action based in any way on Petitioner's failures of selection before the FY 99 and 00 Line Lieutenant Selection Boards be cancelled and, if necessary, that related documentation be removed from her record.

e. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder.


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


Executive Director



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

3027-99

IN REPLY REFER TO

13 Oct 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION [REDACTED] USN,
[REDACTED]

Ref: (a) PERS-00ZB memo of 1 Jun 99

Encl: (1) BCNR PETITION ICO LT [REDACTED]

1. Reference (a) requested comment on the case of LTJG [REDACTED] enclosure (1). [REDACTED] requests the removal of three fitness reports issued by the Commanding Officer of NAB Little Creek.

2. The following events from enclosure (1) summarize the basis of my opinion:

- a. [REDACTED] a Limited Duty Officer (designator 6162) who reported to NAB Little Creek in September 1996 as the Ordnance Division Officer.
- b. [REDACTED] received a Periodic fitness report (for the period 96NOV07-97FEB28) from CAPT [REDACTED]. The overall observation was "Must Promote." This report was not petitioned for removal.
- c. [REDACTED] received a Special fitness report (for the period 97MAR01-97AUG25) from CAPT [REDACTED]. The overall observation was "Significant Problems." This report was petitioned for removal.
- d. [REDACTED] received a Periodic fitness report (for the period 97SEP01-98FEB28) from CAPT [REDACTED]. The overall observation was "Progressing." This report was petitioned for removal.
- e. [REDACTED] received a Detaching of Reporting Senior fitness report (for the period 98MAR28-98JUL21) from [REDACTED]. The overall observation was "Progressing." This report was petitioned for removal.

- f. Due to perceived leadership problems in LTJG [REDACTED] division, her Department Head conducted an informal group interview of division personnel (E-6 and below) on or about 26 June 1997. This was done without the presence of LTJG [REDACTED] or her LCPO. On or about 2 July 1997, the department head issued written guidance to LTJG [REDACTED] and her LCPO on his perceptions of the division's problems and directions to correct those problems.
- g. LTJG [REDACTED] requested an Equal Opportunity climate survey of her division on or about 3 July 1997. Her Executive Officer directed to the command Equal Opportunity Assistant (EOA) to conduct an inquiry during the week of 6 July 1997. The command EOA submitted this report on or about 14 July 1997. The EOA recommended removal of the division officer, LTJG [REDACTED]
- h. LTJG [REDACTED] was relieved of duties as the Ordnance Officer on 25 July 97 by CAPT [REDACTED]
- i. COMNAVBASE Norfolk (ISIC for Commanding Officer, NAB Little Creek) EOA conducted an independent inquiry of LTJG [REDACTED] division and submitted a report on or about 13 August 1997.
- j. CINCLANTFLT Inspector General (IG) initiated an inquiry, based on an anonymous call, on LTJG [REDACTED] relief on or about 22 August 1997. The IG investigation concluded that [REDACTED] relief was proper (in a report dated 10 September 1997).
- k. LTJG [REDACTED] received a Letter of Instruction (LOI) from CAPT [REDACTED] or about 25 Aug 1997.
- l. LTJG [REDACTED] was reassigned as the Repair Officer at NAB Little Creek on or about 2 December 1997.
- m. LTJG [REDACTED] received another LOI from CAPT [REDACTED] on or about 5 February 1998.
- n. LTJG [REDACTED] initiated an UCMJ Article 138 (Complaint Against Commanding Officer) on CAPT [REDACTED] or about 27 March 1998. Documentation on the resolution of the Article 138 was not included in enclosure (1).

- o. CAPT [REDACTED] retired on 1 April 1998. He was relieved by CAPT [REDACTED]
- p. CAPT [REDACTED] delivered a Detachment for Cause (DFC) letter to LTJG [REDACTED] or about 13 May 1998.
- q. COMNAVBASE Norfolk favorably endorsed CAPT [REDACTED] DFC letter, on or about 20 July 1998, to detach LTJG [REDACTED]
- r. The Deputy Chief of Naval Personnel disapproved the DFC on or about 30 November 1998.
- s. BCNR received a petition from [REDACTED] on or about 6 May 1999 to remove two fitness reports by CAPT [REDACTED] and one fitness report [REDACTED]

3. Documents in enclosure (1) indicate that LTJG [REDACTED] did not demonstrate good leadership qualities. However, the command did not appear to fairly distribute the consequences and remedies for this junior officer's deficiencies. LTJG [REDACTED] appears to have been singled out for adverse fitness reports despite a lack of support by her Department Head and Chief Petty Officers in fixing fundamental leadership problems within the division. The three "inquiries" indicate the division CPO leadership actively worked against [REDACTED] efforts. Disapproval of the DFC further lends credibility to this command's single focus effort to blame her for all division leadership problems.

4. The command's DFC letter also sites misconduct as a reason for detachment. However, the command never initiated punitive proceedings for the alleged misconduct, instead citing Letters of Instruction, counseling, and a general lack of energy to pursue legal investigation as reasons to not substantiate the misconduct. An allegation of misconduct is serious enough to warrant substantial documentation and explanation to the affected officer - this opportunity was not afforded.

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5. Despite her deficiencies, LTJ [REDACTED] appears to have been singularly blamed for all leadership problems in a weak division. None of the senior enlisted personnel were held responsible for the lack of leadership in the division. Her chain of command did not address the lack of CPO and Department Head support to solve the problems, only focusing in on LTJ [REDACTED] actions. I recommend that her request to remove the adverse fitness reports be granted and that she be afforded a special board for promotion consideration to Lieutenant.

Commander, U.S. Navy
Special Assistant for
Minority Affairs (PERS-00J)



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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1610
PERS-311
21 January 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LTJG [REDACTED] U [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her fitness reports for the periods 1 March 1997 to 25 August 1997, 1 September 1997 to 28 February 1998, and 28 March 1998 to 21 July 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the reports for the period 1 March 1997 to 25 August 1997, 1 September 1997 to 28 February 1998, and 28 March 1998 to 21 July 1998 to be on file. They are signed by the member acknowledging the contents of each report and her right to submit a statement. The member indicated her desire to submit a statement. The member's statement and first endorsement for the fitness report of 1 March 1997 to 25 August 1997 is reflected in the member's digitized record. No statement was received for the report from 1 September 1997 to 28 February 1998; however, the member provided a copy of her statement with her petition. It was not suitable for file as the reporting senior's endorsement is missing. No statement has been received for the fitness report for the period 28 March 1998 to 21 July 1998.

b. Lieutenant Junior [REDACTED] claims the fitness reports issued were based on unsubstantiated, inaccurate information, and claims the Detachment for Cause was issued in response to an Article 138 complaint against her reporting senior. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he or she must provide evidence to support the claim. I do not believe that [REDACTED] has done so. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

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c. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular reporting period.

d. The member does not prove the reports^{to} be unjust or in error.

3. We concur with Special Assistant for Minority Affairs (PERS-00J) recommendation for removal of the fitness reports in question and the member's petition be forwarded to the Director, Active Officer Promotions, Appointments, and Enlisted Advancement Division (PERS-85) for comments on the member's request for a special selection board.


Head, Performance
Evaluation Branch

